

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	NO. 3:10-cr-00260
	)	
v.	)	JUDGE HAYNES
	)	
ABDIFITH JAMA ADAN, et al	)	

**MOTION IN LIMINE TO EXCLUDE PRIOR VICTIM WITNESS RAPE ACCUSATION**

The United States of America, by and through the undersigned, hereby files this *motion in limine* seeking an order excluding Jane Doe One's (JD1) sexual assault allegations against third parties. Federal Rule of Criminal Procedure 412, the rape shield statute, as well as Sixth Circuit precedent, bars defendants from testing a victim witness' general credibility through the use of the victim witness's sexual assault allegations against third parties that the victim witness later withdraws. On November 19, 2007, JD1 reported to her social worker that her uncle had sexually assaulted her. Several months later, JD1 withdrew her allegation. To the extent that any Defendant seeks to use JD1's prior allegations to attack her general credibility, such tactics are proscribed.

The Sixth Amendment guarantees a criminal defendant the right to confront witnesses against him. See Davis v. Alaska, 415 U.S. 308, 315-16 (1974); Mayes v. Sowders, 621 F.2d 850, 855 (6th Cir. 1980). However, a trial court has the discretion to limit the scope of cross-examination based on concerns about "harassment, prejudice, confusion of the issues, witness

safety, or interrogation that is repetitive or only marginally relevant.” See King v. Trippett, 192 F.3d 517, 524 (6th Cir. 1999) (citing Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)). In this way, the Confrontation Clause “guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” Delaware v. Fensterer, 474 U.S. 15, 20, 106 S.Ct. 292 (1985).

The recognition of cross-examination limitations is never more true than in cases involving sexual misconduct. Federal Rule of Criminal Procedure 412 limits the admissibility of evidence of a rape victim's past sexual behavior to three situations: when constitutionally required, when relevant and more probative than prejudicial on the source of semen or injury, and when relevant and more probative than prejudicial on the issue of consent. Fed. Rule Evid. 412; see United States v. Cardinal, 782 F.2d 34 (6th Cir. 1986). A victim witness's other allegations of sexual assault do not fall within Rule 412's exceptions.

The Sixth Circuit has explicitly held that Rule 412 prohibits the defense from cross examining a victim witness with the victim witness' other allegations of sexual assault that the witness later withdrew. United States v. Cardinal, 782 F.2d 34, 35-6 (6th Cir. 1986). In Cardinal, defendant argued that the victim witness's sexual assault allegations against other family members, that the victim later withdrew, should be used to test the victim witness's credibility. The Sixth Circuit rejected defendant's argument. Instead, the Sixth Circuit recognized the policy considerations underlying Rule 412 and stated, Rule 412's ““principal purpose ... is to protect rape victims from the degrading and embarrassing disclosure of intimate details about their private lives.” (Id. citing 124 Cong.Rec.H. 11944 (daily ed. Oct. 10, 1978) (statement of Rep. Mann)).

In addition, the Sixth Circuit has also recognized that the Confrontation Clause does not permit a defendant from using a victim witness's other allegations of sexual assault to be used to generally attack the victim witness's credibility. Boggs v. Collins, 226 F.3d 728, 737-738 (6th Cir. 2000) (finding cross-examination constitutionally compelled when it reveals witness bias or prejudice, but not when it is aimed solely to diminish a witness's general credibility); accord Vasquez v. Jones, 496 F.3d 564, 574 (6th Cir. 2007).

Here, JD1's prior accusations of sexual assault do not fall within any exception under Rule 412. Moreover, both Cardinal and Boggs prohibit the use of JD1's prior allegations of rape, particularly those against her uncle, to be used to attack JD1's general credibility. Accordingly, the Government requests an order excluding any use of JD1's allegations of sexual assault against third parties to attack her credibility generally.

# CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the forgoing was sent via the Court's electronic filing system or, if not registered, deposited in the United States mail to the following on this 4<sup>TH</sup> day of February 2012.

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